

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty Dkt. 2551-102

C# M#

MAERTENS et al.

TC/A.U.

1634

U.S. Patent No. 6,887,985

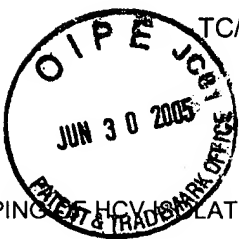
Serial No. 09/899,302

Filed: July 6, 2001

Examiner: Whisenant

Date: June 30, 2005

Title: PROCESS FOR TYPING



Mail Stop Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(D)**

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☒ **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment 0 minus highest number  
previously paid for 20 (at least 20) = 0 x \$50.00 \$0.00 (1202)/\$0.00 (2202) \$

Independent claims after amendment 0 minus highest number  
previously paid for 3 (at least 3) = 0 x \$200.00 \$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for first time, (ignore improper); add  
\$360.00 (1051)/\$180.00 (2051) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this  
paper and attachment(s)  
One Month Extension \$120.00 (1251)/\$60.00 (2251)  
Two Month Extensions \$450.00 (1252)/\$225.00 (2252)  
Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)  
Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$  
Terminal disclaimer enclosed, add \$130.00 (1814)/ \$65.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee \$180.00 (1806) \$

\* Assignment Recording Fee \$40.00 (8021) \$

Other: Rule 18(e) fee, code 1455 \$ 200.00

**TOTAL FEE ENCLOSED \$ 200.00**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

901 North Glebe Road, 11th Floor  
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BJS:

NIXON & VANDERHYE P.C.  
By Atty: B. J. Sadoff, Reg. No. 36,663

Signature: 



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

Maertens

Atty. Ref.: 2551-102; Confirmation No. 3516

U.S. Patent No. 6,887,985

TC/A.U. 1634

Issued: May 3, 2005

Examiner: Whisenant

Appl. No. 09/899,302

Filed: July 6, 2001

For: PROCESS FOR TYPING OF HCV ISOLATES

\* \* \* \* \*

**June 30, 2005**

Mail Stop Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
PURSUANT TO 37 CFR § 1.705(d)**

The Office is requested to reconsider the Patent Term Adjustment (PTA) of the above-identified patent. Specifically, the face of the patent states the PTA is 2 days. The applicants submit, as further detailed herein, that the total adjustment of patent term due to examination delay (pursuant to 37 CFR 1.703) is 363 days while the reduction of the period of adjustment of patent term (pursuant to 37 CFR 1.704) is 89 days. The difference and hence the patent term determination according to 37 CFR 1.705 is submitted to be 274 days. Reconsideration and acknowledgement of the corrected recalculation of the PTA are requested.

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200.00 DP

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The fee set forth in 37 CFR 1.18(e) (fee code 1455, \$200) is attached.

Consideration of the following statement of facts, as required by 37 CFR 1.705, is requested.

The correct patent term adjustment is believed to be 274 days.

As required by 37 CFR 1.705(b)(2)(i), the basis under 37 CFR 1.702 for the adjustment are believed to be as follows:

21 days for failure to mail at least one of a notification under 35 USC 132 or a Notice of Allowance under 35 USC 151 not later than fourteen months after the date on which the application was filed under 35 USC 111(a). See, 37 CFR 1.702(a)(1), application filed July 6, 2001; fourteen months after filing is September 6, 2002 and first action was mailed September 27, 2002.

244 days for failure to issue a patent not later than four months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. See, 37 CFR 1.702(a)(4), issue fee was paid June 7, 2004; four months after payment of issue fee was October 7, 2004, and patent issued May 3, 2005.

342 days for failure to issue a patent within three years of the actual filing date of the application. See, 37 CFR 1.702(b), the application was filed July 6, 2001, three years after filing was July 6, 2004, and the patent issued May 3, 2005.

As required by 37 CFR 1.705(b)(2)(ii), the relevant dates as specified in 37 CFR §§ 1.703(a) through (e) for which an adjustment is sought are as follows:

37 CFR § 1.703(a)(1): the application was filed July 6, 2001; fourteen months after the filing date beginning on the day after the filing date is September 7, 2002 and the first Office Action was mailed September 27, 2002, which is a delay by the Patent Office of 21 days.

37 CFR § 1.703(a)(6): the issue fee was paid June 7, 2004, the date four months from the day after the payment of the issue fee is October 8, 2004; the patent issued May 3, 2005, which is a delay by the Patent Office of 244 days.

37 CFR § 1.703(b): the application was filed July 6, 2001, the date three years from the day after the filing date is July 7, 2004; the patent issued May 3, 2005, which is a delay by the Patent Office of 342 days.

Pursuant to 37 CFR 1.705(b)(ii), the undersigned believes the adjustment as specified in 37 CFR 1.703(f), or the periods which overlap, are the period from October 8, 2004 to May 3, 2005 which forms the basis for the whole of the period of delay under 37 CFR 1.703(a)(6) and a portion of the period from July 7, 2004 to May 3, 2005 which forms the basis for the delay under 37 CFR 1.703(b).

The total delay, minus the overlapping period, therefore due to Patent Office delay is the 342 days delay pursuant to 37 CFR 1.703(b) and the 21 days pursuant to 37 CFR 1.703(a)(1)

The patent is subject to a terminal disclaimer filed February 23, 2004. The terminal disclaimer does not specify an expiration date but rather relates to the terminal part and U.S. Patent No. 6,495,670.

Pursuant to 37 CFR 1.705(b)(2)(iv)(A), the applicants submit that the 89 days from December 28, 2003 (i.e., the day after three months from the mailing of the Office Action dated September 27, 2002) to the March 26, 2003 filing of a response constitute a time period defined by the provisions of 37 CFR 1.704(b).

A review of the U.S. Patent Office calculation of the PTA available on PAIR (copy attached) suggests a number of possible errors, as described below.

For completeness, the applicants noted that there is no record in the applicants file, or the PTO Image File Wrapper, of an Information Disclosure Statement filed June 26, 2004, or of a "Miscellaneous Incoming Letter" filed March 28, 2004, as listed in the attached PTO Patent Term Adjustment History. Clarification and a copy of these papers are requested.

The applicants submitted an Information Disclosure Statement on February 5, 2004, after the mailing of the final rejection of January 5, 2004. The Information Disclosure Statement was filed with the required fee, pursuant to 37 CFR 1.97(d), and the certification required by 37 CFR 1.97(e), for consideration of the listed Castillo et al document.

The 37 CFR 1.97(e) certification was not made with regard to the cited WO 92/10588 and U.S. Patent No. 6,548,244.

The Examiner returned a copy of the PTO-1449 Form filed February 5, 2004 with the Notice of Allowance dated March 10, 2004, which was executed (signed and dated) and included the Examiner's initials in the left-hand column next to the cited U.S. Patent No. 6,548,244 and Castillo et al. The returned PTO-1449 Form did not include the Examiner's initials in the left-hand column next to the cited WO 92/10588 (which would confirm consideration of the reference) nor did the returned PTO-1449 Form include a line through the cited WO 92/10588 (which would confirm that the reference had not been considered). See, MPEP § 609(c)(2) and PTO/SB/08A instructions for Examiner.

On March 26, 2004, the applicants filed a Request for a completely initialed PTO-1449 Form.

The Examiner forwarded a completely initialed copy of the PTO-1449 Form by facsimile on January 6, 2005 (see, attached USPTO facsimile cover page with header of "01/06/05").

The applicants filing of the Information Disclosure Statement of February 5, 2004 did not constitute a failure by the applicants to engage in reasonable efforts to conclude prosecution, as acknowledged by the Patent Office PAIR page PTA calculation. See, also 37 CFR 1.704(d).

The applicants filing of the Request for a completely initialed PTO-1449 Form on March 26, 2004 did not constitute a failure by the applicants to engage in reasonable efforts to conclude prosecution. While the Request submitted March 26, 2004 was a paper filed after a Notice of Allowance, the applicants had no opportunity prior to receipt

of the Notice of Allowance to request correction of the incompletely initially PTO-1449 Form, which was only received with the Notice of Allowance dated March 10, 2004.

The applicants diligently engaged in efforts to clarify the record and conclude prosecution by filing the Request of March 26, 2004 to receive a completely initialed copy of the executed PTO-1449 Form.

Even if the Patent Office believes the filing of the Request of Mach 26, 2004 constituted a failure by the applicants to engage in reasonable efforts to conclude prosecution, which it did not, 37 CFR 1.704(c) indicates that the adjustment of 37 CFR 1.703 (i.e., 363 days) should be reduced for a submission after allowance by the lesser of four months or the number of days beginning on the date the paper was filed (i.e., March 26, 2004) and ending on the mailing date of the Office response to the paper (i.e., January 6, 2005). As the later period was more than four months, the period pursuant to 37 CFR 1.704(c)(10), if applicable at all, is four moths.

As detailed above, the total period of reduction of the period of adjustment of patent term, pursuant to 37 CFR 1.704, is believed to be 89 days. At most, the period for adjustment is 4 months (i.e., 120 days) plus 89 days, or 209 days.

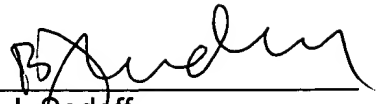
The total PTA, pursuant to 37 CFR 1.703(f), third sentence, therefore is submitted to be 274 days (i.e., 363 days PTO delay reduced by 89 days defined by 37 CFR 1.704(b)).

A Notice recalculating the PTA as requested above, or further explanation, is requested.

Maertens  
U.S. Patent No. 6,887,985  
Appl. No. 09/899,302  
**June 30, 2005**

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
B. J. Sadoff  
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09/899,302 PROCESS FOR TYPING OF HCV ISOLATES

## Patent Term Adjustment History



Patent Term Adjustment (PTA) for Application Number: 09/899,302			
			Days
Filing or 371(c) Date:	07-06-2001	USPTO Delay (PTO):	301
Issue Date of Patent:	05-03-2005	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay(APPL):	299
Post-Issue Petitions (days):	+0	Total PTA:	2
USPTO Adjustment(days):	+0	Explanation Of Calculations	
Patent Term Adjustment History			
Date	Contents Description	PTO(Days)	APPL (Days)
05-03-2005	Patent Issue Date Used in PTA Calculation	208	
04-13-2005	PTA 36 Months	72	
03-28-2005	Receipt into Pubs	↑	
03-25-2005	Dispatch to FDC	↑	
03-24-2005	Dispatch to FDC	↑	
03-24-2005	Application Is Considered Ready for Issue	↑	
03-23-2005	Receipt into Pubs	↑	
12-07-2004	Receipt into Pubs	↑	
07-09-2004	Reference capture on IDS	↑	
06-26-2004	Information Disclosure Statement (IDS) Filed	↑	120
06-23-2004	Receipt into Pubs	↑	↑
06-07-2004	Issue Fee Payment Verified	↑	
06-07-2004	Issue Fee Payment Verified	↑	
06-07-2004	Issue Fee Payment Received	↑	↑
04-01-2004	Receipt into Pubs	↑	↑
03-31-2004	Workflow - File Sent to Contractor	↑	↑
03-28-2004	Miscellaneous Incoming Letter	↑	90
03-10-2004	Mail Notice of Allowance	↑	↑
03-08-2004	Issue Revision Completed	↑	↑
03-08-2004	Notice of Allowance Data Verification Completed	↑	↑
03-08-2004	Notice of Allowability	↑	↑
02-27-2004	Date Forwarded to Examiner	↑	↑
02-23-2004	Amendment after Final Rejection	↑	↑
02-12-2004	Reference capture on IDS	↑	↑
02-05-2004	Information Disclosure Statement (IDS) Filed	↑	↑
01-05-2004	Mail Final Rejection (PTOL - 326)	↑	↑
12-29-2003	Final Rejection	↑	↑
10-18-2003	Correspondence Address Change	↑	↑
10-18-2003	Date Forwarded to Examiner	↑	↑
09-29-2003	Incoming Letter Pertaining to the Drawings	↑	↑
09-29-2003	Response after Non-Final Action	↑	↑

07-25-2003	Mail Non-Final Rejection	↑	↑
07-24-2003	Non-Final Rejection	↑	↑
05-15-2003	Date Forwarded to Examiner	↑	↑
03-26-2003	Information Disclosure Statement (IDS) Filed	↑	↑
03-26-2003	Response after Non-Final Action	↑	89
03-26-2003	Request for Extension of Time - Granted	↑	↑
09-27-2002	Mail Non-Final Rejection	21	
09-26-2002	Non-Final Rejection	↑	
08-13-2002	X-Pre-Legal Complete New Case	↑	
08-13-2002	Case Docketed to Examiner in GAU	↑	
05-02-2002	Application Dispatched from OIPE	↑	
05-01-2002	Application Is Now Complete	↑	
04-19-2002	Additional Application Filing Fees	↑	
04-19-2002	Applicant has submitted new drawings to correct Corrected Papers problems	↑	
04-02-2002	New or Additional Drawing Filed	↑	
02-19-2002	Corrected Paper	↑	
02-13-2002	CRF Is Good Technically / Entered into Database	↑	
07-24-2001	IFW Scan & PACR Auto Security Review	↑	
07-06-2001	Preliminary Amendment	↑	
07-06-2001	CRF Disk Has Been Received by Preexam / Group / PCT	↑	
07-06-2001	Initial Exam Team nn	↑	

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